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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN 01 043 54359 Office: NEBRASKA SERVICE CENTER

Date: JUN -4 2002

IN RE: Petitioner:
Beneficiary



Petition: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(K)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

Identifying data concealed
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INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of India, as the fiance(e) of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K).

The director denied the petition after determining that the petitioner and the beneficiary had not personally met within two years before the date of filing the petition as required by section 214(d) of the Act. The director further found that the petitioner had failed to establish that he warranted a favorable exercise of discretion to waive this statutory requirement.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), defines "fiance(e)" as:

An alien who is the fiancée or fiance of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry

Section 214(d) of the Act, 8 U.S.C. 1184(d), states in pertinent part that a fiance(e) petition:

shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties **have previously met in person within two years before the date of filing the petition**, have a bonafide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival
[emphasis added]

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) on November 13, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on November 13, 1998 and ended on November 13, 2000.

With the initial filing of the petition, the petitioner indicated that he and the beneficiary had met. In response to the director's request for additional information and evidence concerning the parties' last meeting, the petitioner stated that he was going to meet the applicant's family in December 2000. The director found that the petitioner and beneficiary had not met within the two-year period before the filing date of the petition and denied the application accordingly.

On appeal, the petitioner submits a letter explaining that he and the beneficiary belong to the Sikh religion and are from a rural village where religious beliefs, social practices, and way of life are strongly bonded to set traditions practiced for many generations. Anyone who violates these beliefs is looked down upon and his/her family is segregated from participating with the rest of the community. The petitioner also explains that according to the Sikh tradition, when someone comes of age to marry the elders in the family look for a suitable match. Once a suitable match is found, the boy and girl meet briefly and are later asked if they like each other. If the answer is yes from both sides, an engagement ceremony follows and plans are made for a wedding.

The petitioner states that his marriage to the beneficiary was initially arranged when they were both young and that he has seen the beneficiary on many occasions at family gatherings, weddings, and prayers. In 1999, he and the beneficiary spoke in a telephone call arranged by the petitioner's father to find out if either one of them had any objection to getting married. The petitioner states that they did not have any objection, he subsequently visited the beneficiary in India, and the parties are now traditionally engaged.

Pursuant to 8 C.F.R. 214.2(k)(2), a director may exercise discretion and waive the requirement of a personal meeting between the two parties if it is established that compliance would:

- (1) Result in extreme hardship to the petitioner; or
- (2) Violate strict and long-established customs of the beneficiary's foreign culture or social practice.

In the instant case, the petitioner's explanation does not establish that he warrants a favorable exercise of discretion to waive the requirement of a personal meeting. He indicates that he had personally met the beneficiary when they were young, more than two years prior to filing the petition, and that he intended to visit her in December 2000, after filing the petition. He has failed to explain why it is accepted that he could meet the beneficiary both more than two years before as well as after the filing date of the petition but not within the statutorily required time frame.

The petitioner has failed to establish that he and the beneficiary have personally met within the time period specified in section 214(d) of the Act. He has also failed to establish that his failure to comply with the requirement is based on extreme hardship to him or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R 214.2(k)(2), the denial of the petition is without prejudice. If the petitioner and beneficiary did, in fact, meet in December 2000, the petitioner may file a new I-129F petition on behalf of the beneficiary. The petitioner will be required to submit evidence that he and the beneficiary have met within the two-year period that immediately precedes the filing of a new petition. Without the submission of documentary evidence that clearly establishes that the petitioner and the beneficiary have met in person during the requisite two-year period, the petition may not be approved unless the director grants a waiver of that requirement.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.